232.

SUPREME COURT OF THE UNITED STATES.

No. 69.

MICHAEL MUSSON AND GEORGE O. HALL, SURVIVING PARTNERS OF WILLIAM NOLL, PLAINTIFFS,

vs.

WILLIAM A. LAKE.

ON A CERTIFICATE OF DIVISION IN OPINION FROM THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

INDEX.

	Original.	Print.
Style of court, and title of suit - - - - - - -	1	2
Bill of exchange sued on - - - - - - - -	1	2
Protest - - - - - - - - - -	2	3
Question certified - - - - - - - - -	4	4

J. & G. S. Gideon, Printers.

In the Circuit Court of the United States for the southern district of Mississippi—May term, 1842.

MICHAEL MUSSON AND GEORGE O. HALL, surviving partners of WILLIAM NOLL, deceased,
vs.
WILLIAM A. LAKE.

This was an action of assumpsit brought by the plaintiffs against the defendants, as endorser of a bill of exchange.

On the trial, the plaintiffs read in evidence to the jury the bill of exchange sued on, which is in the words and figures following, to wit:

"VICKSBURG, 17*th December*, 1836.

Exchange for $6,133 $\frac{00}{100}$.

Twelve months after first day of February, 1837, of this first of exchange, (second of the same tenor, and date unpaid,) pay to the order of R. H. & J. H. Crump, six thousand one hundred and thirty-three dollars, value received, and charge the same to account of

STEELE, JENKINS, & Co.

To KIRKMAN, ROSSER, & Co.,
New Orleans.

Endorsed:

R. H. & J. H. CRUMP,
W. A. LAKE.

Kirkman, Rosser, & Co., New Orleans, 3d February, 1838—presented for non-payment.

A. MAZARAN, *Not. Pub.*

It being admitted, that Vicksburg, where said bill bore date, was in the State of Mississippi, and New Orleans in the State of Louisiana, the plaintiffs then offered to read in evidence to the jury, the protest of said bill of exchange; which protest, thus offered to be read, is in the words and figures following, to wit:

"UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument, protest, be it known, that on this third day of February, in the year one thousand eight hundred and thirty-eight, at the request of the Union Bank of Louisiana, holder of the original draft, whereof a true copy is on the reverse hereof written, I, Adolphe Mazarean, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, demanded payment of said draft, at the counting house of the acceptors whereof, and was answered by Mr. Kirkman that the same could not be paid.

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do *solemnly*, publicly, and solemnly protest, as well against the drawer or maker of the said draft, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be suffered for want of payment of the said draft.

Thus done and protested, in the presence of John Cragg and Henry Frain, witnesses.

In testimony whereof, I grant these presents under my sig-
[L. S.] nature, and the impress of my seal of office, at the city of New Orleans, on the day and year first herein written.

A. MAZAREAN, *Notary Public.*

The copy of the said bill of exchange, referred to in said protest, on the reverse side thereof written, is in the words and figures following, to wit:

"VICKSBURG, 17*th December*, 1836.

Exchange for $6,133 $\frac{00}{000}$.

Twelve months after the first day of February, 1837, of this first of exchange, (second of same tenor, and date unpaid,) pay to the order of R. H. & J. H. Crump, six thousand one hundred and thirty-three dollars, value received, and charge the same to account of

STEELE, JENKINS, & Co.

To KIRKMAN, ROSSER, & Co.,
New Orleans."

Endorsed: R. H. & J. H. CRUMP,
W. A. LAKE.

WM. NOLL, & Co., in liquidation.

But the defendant objected to said protest, and the copy of the bill on the reverse side thereof written, being read in evidence to the jury, on the ground that it was not stated in said protest that the notary presented said bill of exchange to the acceptor, or either of them, or had it in his possession when he demanded payment of the same.

And that for this alleged defect, which it was insisted could not be supplied by other proof, the said protest was invalid and void upon its face, and could not be received as evidence of a legal presentment of the bill for payment, or of the dishonor of the bill. And, thereupon, on the question whether the said protest could be read to the jury, as evidence of a legal presentment of the bill for payment, or of the dishonor of said bill, the judges were opposed in opinion. Which is ordered to be certified to the Supreme Court of the United States for their decision.

J. McKINLEY, [L. S.]
J. GHOLSON. [L. S.]